



FACULTY OF ENVIRONMENT
RESOURCE AND ENVIRONMENTAL MANAGEMENT

November 15, 2013

Ministry of Environment
PO Box 9047
Stn Prov Govt
Victoria, BC V8W 9E2

Sent by email to: livingwatersmart@gov.bc.ca

Attention: Honourable Minister Polak

RE: legislative proposal for a Water Sustainability Act for BC

The Resource and Environmental Management Water Research Group is pleased to provide comments about the development of a new water act for BC. The following comments were prepared by our group in response to the legislative proposal "A Water Sustainability Act for BC" (Act) released on October 18, 2013. We are pleased in the great strides the ministry is taking toward modernizing our water legislation and we look forward to the opportunities a new act will provide for managing BC's precious water resources.

While we applaud the ministry's efforts, we also note some opportunities for improvement in the proposed legislation. We submit this document to communicate enhancements to the proposed Act that we feel would improve its effectiveness. These enhancements are primarily related to environmental flows, adaptive management, policy harmonization, public participation, First Nations participation, and water pricing.

Our **nine** general recommendations about the proposed Act are as follows:

1. Strengthen Environmental Flow Needs Regulation
2. Do Not Permit Exemptions
3. Improve Harmonization with Overlapping Statutes
4. Enable Review and Revision
5. Strengthen Monitoring and Public Access to Data
6. Strengthen and Clarify Enforcement Mechanisms
7. Include the Public and First Nations in Effective Processes for Water Sustainability Plans and Water Objectives
8. Enable More Effective Water Pricing
9. Improve Standards for Implementation

In the remainder of this document we outline specific details related to each of these broad recommendations.

1. Strengthen Environmental Flow Needs Regulation

- Environmental Flow Needs (EFNs) should be protected in the new Act using enforceable standards, not guidelines.
- We suggest the Act require decision-makers to consider EFNs when adjudicating *all*, not most, new water licenses.
- The Act should specify how EFNs are to be weighted relative to other values in licensing decisions. In most cases, EFNs should be among the highest weighted criteria. If EFNs are weighted against economic criteria, the value of affected ecosystem services should be incorporated into the assessment.
- Ideally, all existing licenses should be reviewed, but the new legislation should at minimum enable review of individual existing licenses at the discretion of decision-makers for the purposes of ensuring EFNs are met. Review should not be triggered solely by amendment applications.
- Groundwater influences on surface flow should be considered in any evaluation of EFNs.
- Enable Critical Environmental Flow measures during drought *and times of scarcity*. For example, years with unusually low snowpack leading to minimal groundwater recharge and low surface flows will not necessarily qualify as droughts, but it is still critical to manage human use of water in a way that protects EFNs during these times.
- FITFIR should be discarded during droughts and times of scarcity in favour of priority use or a method defined in an area-based regulation. Area-based regulations should allow for EFN priority over existing FITFIR allocations. The FITFIR allocation system should not be extended to groundwater users, a more flexible allocation system should be implemented.
- Powers should exist under the Act for the province to create ecological reserves. Under the Water Act, the province has the power to create an ecological reserve in ecologically or culturally significant streams, rivers, or lakes. A similar power should exist in the WSA.

2. Do Not Permit Exemptions

- Do not permit exemptions from the new Act for Forestry, Oil and Gas or any other natural resource industry.
- Provide more information to the public about how water use purposes would differ for oil and gas, and solicit public comment before including this new purpose in the updated Act.
- Adjudication of applications supporting oil and gas activities by Regional Water Managers from the Oil and Gas Commission should be reviewed by at least one independent third party.

- We fully support the proposal to regulate groundwater. However, the reliance on self-reporting by domestic water use well owners is insufficient. We suggest that the Act require licenses for all uses of groundwater and not exclude “domestic uses of water”.
- Ideally, all users, not just large volume users, should be licensed. This would enable adequate monitoring of groundwater withdrawals, including the cumulative effects of many small withdrawals. However, given the challenges in BC associated with the administrative, political and economic feasibility of licensing all users we suggest an interim compromise: “Larger water users” should be defined by the area-based approach, or on a source-by-source basis and based on scientific assessment of the source rather than by a single province-wide standard. New legislation should ensure that area-based regulations would accommodate this recommendation.

3. Improve Harmonization with Overlapping Statutes

- We are pleased to see that the proposed legislation considers other overlapping statutes. The Act should be the over-arching provincial standard for water management and this should be explicit in the new Act. All other provincial statutes should defer to the Act and the Act should require any necessary adjustments to these laws to reflect this change.
- The new Act should explicitly state the order of priority among overlapping statutes for situations where multiple statutes apply.
- We support the proposal to absorb sections of the Fish Protection Act into the Act only if the process does not weaken the provisions of the Fish Protection Act that support fish conservation.
- The Act should include guidance and/or standards for surface and ground waters that cross outside of BC’s jurisdictional boundaries. In these transboundary cases, clarity is needed in the new Act regarding priority use, conflict resolution mechanisms, pollution/debris, drought regulations, etc.
- The Columbia River Treaty should be included in Table A1.

4. Enable Review and Revision

- The Act should explicitly indicate when review and opportunities for revision of the Act will take place.
- The Act should require that Water Sustainability Plans state when review and opportunities for revision will take place.

- Given that groundwater legislation is new for BC, enable an explicit standard that requires monitoring the effects of the new legislation on groundwater resources and users, as well as mechanisms for review and revision of the legislation as needed.
- Establish all *existing* licenses as subject to review at the discretion of decision-makers at any time, not 30 years from the Act's entry into force.

5. Strengthen Monitoring and Public Access to Data

- Harness the licensing process as an opportunity to collect data for assessing the state of surface and ground water in BC. For example, require aquifer licensees to submit information for each well based on a set of pre-defined indicators.
- We suggest the Act require mandatory submission of well records for *both* existing and new wells.
- We suggest the Act require mandatory inclusion of estimated withdrawal volumes from each licensed well in the WELLS database. Make this information publicly available and easily searchable and downloadable.
- We support the requirement for users to measure and report their use, particularly in the case of large volume users. Enabling occasional water conservation audits is not sufficient and misses an opportunity to address major gaps in BC water monitoring that could be used to improve future management decisions. We also suggest the Act require smaller water users to measure and report in more water-scarce regions so that the cumulative effects of multiple users can be adequately estimated and assessed. Enabling the possibility of area-based regulations is not sufficient in these cases.
- Make all provincial water data publicly available using the WELLS, or other database.
- 'Modernize' the WELLS database to make it more user-friendly and accessible.
- Remove the suggestion that area-based regulations report in a different method, form or frequency. This will lead to inconsistent and potentially un-usable data at the provincial scale.

6. Strengthen and Clarify Enforcement Mechanisms

- We suggest the Act include provisions to allow decision-makers to revoke a license if the licensee's water use is placing EFNs or human health at risk or is in conflict with a Water Sustainability Plan or area-based regulation.
- If new compliance-enforcement mechanisms are included in the updated Act, provide specifics about how decision-makers should determine the appropriate mechanism. Compliance

mechanisms and their use in enforcement should not have the overall effect of weakening incentives to comply.

- We support the concept of area-based regulations. We suggest the Act fully enable regions to pursue a course of adaptive water governance appropriate for their area. We further suggest the Act explicitly clarify how area-based regulations (and if enabled through water sustainability plans to include water sustainability plans) become the legislative standard in the region.

7. Include the Public and First Nations in Effective Processes for Water Sustainability Plans and Water Objectives

- The Act should legislate as a standard that the public, including First Nations, be engaged in the establishment of Water Objectives.
- We suggest that Act legislate as a standard that the public and First Nations be engaged in collaborative, interests-based, and consensus-based negotiations in the formulation of Water Sustainability Plans. Establish standards for the resolution of disputes if consensus is not achievable.
- Enable the application of special mechanisms for acknowledging First Nations' constitutional rights by including affected Nations in Water Sustainability Planning processes as distinct governments (e.g. two-tiered collaborative planning process, with government-to-government negotiations between the province and affected First Nations at the second tier).
- Water Sustainability Plans should be subject to public review prior to adoption.

8. Enable More Effective Water Pricing

- Increase rates for water fees and rentals. Rates for water fees and rentals should at least be increased so that they cover the cost of administering and managing *all* water licenses as well as short-term approvals. Furthermore, pricing for all uses should be changed so that the rates reflect the actual value of water. These changes should encourage efficient use of water resources. Negative impacts on certain industries or the residential sector resulting from increased costs may be addressed using existing programs (e.g. Environmental Farm Plan for the agricultural sector). New programs may be required to help industrial and residential sectors adapt to changes in pricing.
- Do not exempt short-term approvals from paying water fees and rentals. It appears that short-term approvals by the B.C. Oil and Gas Commission are exempt from paying for their water use. Water used in short-term approvals does have a value and thus should be priced.



FACULTY OF ENVIRONMENT
RESOURCE AND ENVIRONMENTAL MANAGEMENT

- Review rates on a regular basis. Consider requirements to review and adjust rates for water fees and rentals on a regular basis (e.g. every few years).
- Use area-based pricing. Since water demand and supply can differ by region the value of water may differ by region. Thus, the government should consider area-based structure and rates for water fees and rentals, though we recognize that such an approach is potentially more complex than a single structure and set of rates.
- Price groundwater. While it provides details on surface water prices, the legislative proposal does not identify whether groundwater will be subject to pricing. Groundwater should be priced. Our recommendations above apply to both surface and groundwater.

9. Improve Standards for Implementation

- The province should include a commitment to ensure adequate ministry resources to accomplish the new roles and responsibility proposed in the Act. It was acknowledged that current fees and rental do not cover the cost of administering the current program and we urge the government to make a comment in funding, through increased licensing fees and rentals or otherwise, to fully support the changes in the Act.
- In case of Water Objectives, the new Act should be explicit about who is responsible for setting strategies to meet these objectives, and how these strategies are to be developed. It is unclear if strategies will be set via Water Management Plans or some other mechanism. Where deemed appropriate by decision-makers, the Act should explicitly enable/permit experimental programs to test strategies at a small scale prior to province-wide adoption.
- The Act should explicitly include local Health Authorities as decision-makers.

Sincerely,

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